

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

DARREL ARTHUR DAVES,

Appellant.

No. 37932-5-II

UNPUBLISHED OPINION

Penoyar, J. — Darrel Daves appeals his second degree organized retail theft conviction, arguing that the State failed to present sufficient evidence. Concluding that the evidence is sufficient, we affirm.<sup>1</sup>

**FACTS**

On March 12, 2008, Ranger Gapinski, an asset protection officer at the Wal-Mart in Lacey, Washington, observed Christopher Williams and Daves examining LCD televisions. Gapinski recognized Williams from a previous theft at the store. When Williams attempted to pick up one of the unboxed televisions, an anti-theft device stopped him.<sup>2</sup> After conferring, the two men continued to look at the televisions. At one point, Daves stuck “half of his body between the TV and the steel structure to . . . look to see how [the televisions were secured] to see if there was an easier obvious way that they could get around [the anti-theft device].” Report of Proceedings (RP) (May 21, 2008) at 76. Williams eventually found a smaller LCD television

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<sup>1</sup> A commissioner of this court initially considered Daves’s appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

<sup>2</sup> Wal-Mart staff had placed “spider wrap” security devices on the televisions after Williams’ prior thefts. Report of Proceedings (RP) (May 21, 2008) at 65.

not secured by an anti-theft device, placed the television in the shopping cart, and began walking to the front of the store. As they walked through the store, Williams added a stuffed animal to the cart.

Williams and Daves passed the checkout stands without paying. Daves walked to the exit doors first, and triggered the automatic doors, which operated on a two second delay. Daves looked back at Williams and Williams ran through the doors with the television and other items. Wal-Mart employees tried to stop Williams and Daves, but failed. A truck pulled up to the store exit. Williams and Daves abandoned the merchandise, jumped into the bed of the truck, and the truck drove off. Wal-Mart employees recovered the merchandise and calculated the total value as \$832.62. Based on a license plate number the Wal-Mart employees provided, police stopped the truck and arrested the occupants, including Daves.

The State charged Daves with second degree organized retail theft. Gapinski testified that it is common for people intending to steal merchandise to work in pairs. He stated that often times one person will act as a “watch out,” and will look out for loss prevention personnel. RP (May 21, 2008) at 109. He estimated that about thirty percent of the time, a person will leave the store first to make sure the path is clear for the other person, who usually has the merchandise. He stated that Williams’s and Daves’s behavior was consistent with this pattern.

Williams testified and admitted that he pleaded guilty to theft for the incident. He asserted that Daves did not participate in the theft, but had merely provided Williams with a ride. On cross-examination, Williams admitted that he had participated in two prior robberies of the same Wal-Mart, each time using a partner and a getaway vehicle. Williams insisted that while his prior

accomplices knew about his plans to steal, Daves did not.

The jury found Daves guilty.

#### ANALYSIS

Daves argues on appeal that the State failed to present sufficient evidence that he stole merchandise with the assistance of an accomplice because Williams denied that Daves participated in the theft. Evidence is sufficient to support a conviction if any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt when viewing the evidence in the light most favorable to the State. *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004). An appellant claiming insufficiency of the evidence “admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” *Thomas*, 150 Wn.2d at 874 (quoting *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992)).

A person is guilty of second degree organized retail theft if he or she commits theft of property worth at least \$250 from a mercantile establishment with an accomplice. RCW 9A.56.350(1)(a). A person is guilty of a crime if it is committed by the conduct of another person for which he or she is legally accountable. RCW 9A.08.020(1). A person is legally accountable for the conduct of another person when he or she is an accomplice of the other person in the commission of the crime. RCW 9A.08.020(2)(c). A person is an accomplice of another person in the commission of a crime if:

- (a) With knowledge that it will promote or facilitate the commission of the crime, he
  - (i) solicits, commands, encourages, or requests such other person to commit it; or
  - (ii) aids or agrees to aid such other person in planning or committing it;
- or
- (b) His conduct is expressly declared by law to establish his complicity.

RCW 9A.08.020(3).

Taking the evidence in the light most favorable to the State, there is sufficient evidence that Daves and Williams were accomplices. Daves stayed close Williams during the entire time they were at Wal-Mart. Daves conferred with Williams after Williams realized that store personnel had installed anti-theft devices on the television. Daves examined an anti-theft device attached to a television that Williams attempted to pick up. Daves walked with Williams as he walked out of the store without paying for any of the items Williams had taken. Daves exited the store slightly before Williams, allowing Williams to bypass the two-second time delay on the automatic doors and run out of the store at full speed. Upon running out of the store, Daves dove into the truck's bed, rather than climbing into the truck's cab. This action was inconsistent with Williams' assertion that Daves had given him a ride to the Wal-Mart. Finally, Gapinski testified that this behavior pattern is common among people operating together to steal merchandise. A rational jury could find that Daves and Williams were accomplices in the merchandise theft exceeding \$250 in value. Sufficient evidence supports the jury's verdict.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

Penoyar, J.

We concur:

Van Deren, C.J.

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Quinn-Brintnall, J.